

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JONATHAN FERGUSON,)
v.)
Plaintiff,)
v.)
CIVIL CITY OF SOUTH BEND, IN, *et al.*,)
Defendants.)
Case No.: 3:13-CV-417-JVB-JEM

ORDER

Plaintiff and his attorney failed to appear at a court-ordered settlement conference with Magistrate Judge Andrew Rodovich on January 4, 2016. (Order, DE 40.) Accordingly, Judge Rodovich ordered Plaintiff to state, in writing, why he failed to appear. (*Id.*)

Plaintiff filed a Verified Notice on January 6, 2016. (Pl.'s V. Notice Showing Good Cause, DE 42.) Plaintiff's attorney stated he was "at his residence Monday January 5, 2016, recovering from a sudden, severe and lingering case of food poisoning contracted 7 days ago." (*Id.* § 1.)¹ Plaintiff's attorney also stated he was in the process of moving his office from Bristol to Elkhart, and had no staff to call the Court and no functioning office phones or computers. (*Id.* § 2.)

Plaintiff's attorney did not explain in the Verified Notice why he could not contact the Court or opposing counsel via a non-office phone or computer. Nor did Plaintiff's attorney explain why Plaintiff himself did not appear at the Settlement Conference as ordered.

¹ The Court notes that January 5, 2016, was not a Monday, but was the Tuesday after January 4, 2016, which was the day set for the Settlement Conference. The Court assumes Plaintiff's Verified Notice contains typographical errors concerning this date, and the date of the show-cause Order. The Court attaches no significance to these errors.

Defendants noted in their Response that defense counsel had received an email from Plaintiff's counsel regarding a different matter on December 30, 2016. (Resp. to Pl.'s Notice of Showing Good Cause, DE 43, § 5.) This was less than a week before the scheduled Settlement Conference.

Judge Rodovich issued a Report and Recommendation on January 20, 2016, finding that Plaintiff's attorney failed to show good cause for either his or his client's failure to appear or to contact the Court. (DE 45.) The Report recommends that this Court order Plaintiff's attorney to pay the Defendants' fees and costs associated with the Settlement Conference, totaling \$1,131.36. (*Id.*) The Report further recommends that this Court dismiss Plaintiff's claims as a sanction for failing to appear. (*Id.*)

The Court accepts the recommendation regarding monetary sanctions. The Court **ORDERS** Plaintiff's attorney to pay the Defendants' fees and costs associated with the settlement conference, by paying \$1,131.36 to defense counsel by March 31, 2016. The Court further **ORDERS** Plaintiff's attorney to file in this case a statement of compliance by March 31, 2016.

The Court takes the recommendation of dismissal for failure to appear under advisement.

SO ORDERED on March 4, 2016.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE